

# State of Wisconsin



2011 Senate Bill 417

Date of enactment: April 6, 2012  
Date of publication\*: April 19, 2012

## 2011 WISCONSIN ACT 236

AN ACT *to amend* 108.09 (2) (b), 108.09 (3) (a) 1., 108.09 (3) (a) 2., 108.09 (3) (b), 108.09 (8) (b), 108.22 (1) (a), 108.225 (1) (b), 108.225 (16) (am) 1. (intro.), 108.225 (17) and 108.24 (1); and *to create* 108.04 (2) (ae), 108.04 (11) (bh), 108.16 (6) (n) and 108.22 (8) (bh) of the statutes; **relating to:** concealment of benefit claim information, availability for work, interest on delinquent payments, and the composition and authority of appeal tribunals under the unemployment insurance law.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 108.04 (2) (ae) of the statutes is created to read:

108.04 (2) (ae) A claimant is not available for work under par. (a) 1. in any week in which he or she is located in a country other than the United States, as defined in s. 108.02 (15) (do) 2., or Canada for more than 48 hours unless the claimant has authorization to work in that other country and there is a reciprocal agreement concerning the payment of unemployment insurance benefits between that other country and the United States.

**SECTION 2.** 108.04 (11) (bh) of the statutes is created to read:

108.04 (11) (bh) In addition to the penalty for benefits resulting from concealment as provided in par. (be), the department shall assess a penalty against the claimant in an amount equal to 15 percent of the benefit payments erroneously paid to the claimant as a result of one or more acts of concealment described in pars. (a) and (b).

**SECTION 3.** 108.09 (2) (b) of the statutes is amended to read:

108.09 (2) (b) The department shall issue determinations whenever necessary to resolve any matters which

that may bar, suspend, terminate or otherwise affect the employee's eligibility for benefits or to resolve any liability for penalties under s. 108.04 (11) (bh).

**SECTION 4.** 108.09 (3) (a) 1. of the statutes is amended to read:

108.09 (3) (a) 1. To hear and decide disputed claims or to resolve liabilities under sub. (2) (b), the department shall establish appeal tribunals. Except as authorized in this paragraph, each tribunal shall consist of an individual who is a permanent employee of the department.

**SECTION 5.** 108.09 (3) (a) 2. of the statutes is amended to read:

108.09 (3) (a) 2. The department may appoint an individual who is not a permanent employee of the department to serve as a temporary reserve appeal tribunal ~~if the individual formerly served as an appeal tribunal while employed by the department and retired from state service as a permanent employee.~~ An individual who is appointed to serve as a temporary reserve appeal tribunal shall be an attorney who is licensed to practice in this state.

**SECTION 6.** 108.09 (3) (b) of the statutes is amended to read:

108.09 (3) (b) ~~The~~ Consistently with applicable state and federal law, the appeal tribunal may affirm, reverse

\* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

or modify the initial determination of the department or set aside the determination and remand the matter to the department for further proceedings, or may remand to the department for consideration of any issue not previously investigated by the department.

**SECTION 7.** 108.09 (8) (b) of the statutes is amended to read:

108.09 (8) (b) Any party in a dispute concerning benefit eligibility or liability for overpayment of benefits or a penalty imposed under s. 108.04 (11) (bh), or in any administrative proceeding under this chapter concerning such a dispute, may be represented by counsel or another agent; but no such counsel or agent may together charge or receive from an employee for all such representation in connection with such a dispute a fee which, in the aggregate, exceeds 10% of the maximum benefits at issue unless the department has first approved a specified higher fee. This paragraph does not apply to any fee charged for representation before a court of law.

**SECTION 8.** 108.16 (6) (n) of the statutes is created to read:

108.16 (6) (n) Any penalty collected under s. 108.04 (11) (bh).

**SECTION 9.** 108.22 (1) (a) of the statutes is amended to read:

108.22 (1) (a) If any employer, other than an employer which has ceased business and has not paid or incurred a liability to pay wages in any quarter following the cessation of business, is delinquent in making by the assigned due date any payment to the department required of it under this chapter, the employer shall pay interest on the delinquent payment at ~~the rate of one percent per that monthly rate that annualized is equal to 9 percent or to 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, whichever is greater, for each month or fraction thereof~~ that the employer is delinquent from the date such payment became due. If any such employer is delinquent in making any quarterly report under s. 108.205 (1) by the assigned due date, the employer shall pay a tardy filing fee of \$50 for each delinquent quarterly report.

**SECTION 10.** 108.22 (8) (bh) of the statutes is created to read:

108.22 (8) (bh) To recover any penalty under s. 108.04 (11) (bh), the department may recoup the amount of the penalty by filing a warrant against a liable individual in the same manner as is provided in this section for collecting delinquent payments from employers.

**SECTION 11.** 108.225 (1) (b) of the statutes is amended to read:

108.225 (1) (b) "Debt" means a delinquent contribution or repayment of a benefit overpayment, an assessment under s. 108.04 (11) (cm) a liability incurred under

s. 108.04 (11) (bh), or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.

**SECTION 12.** 108.225 (16) (am) 1. (intro.) of the statutes is amended to read:

108.225 (16) (am) 1. (intro.) In the case of benefit overpayments or a penalty imposed under s. 108.04 (11) (bh), an individual debtor is entitled to an exemption from levy of 80% of the debtor's disposable earnings, except that:

**SECTION 13.** 108.225 (17) of the statutes is amended to read:

108.225 (17) EXEMPTIONS. The first \$1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment or penalty imposed under s. 108.04 (11) (bh). No other property is exempt from levy except as provided in sub. (16).

**SECTION 14.** 108.24 (1) of the statutes is amended to read:

108.24 (1) Any person who knowingly makes a false statement or representation to obtain any benefit payment under this chapter, either for himself or herself or for any other person, shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 90 days, or both; and each such false statement or representation constitutes a separate offense. This penalty is in addition to any penalty imposed under s. 108.04 (11) (bh).

**SECTION 15. Initial applicability.**

(1) The treatment of sections 108.04 (11) (bh), 108.09 (2) (b), (3) (a) 1., and (8) (b), 108.22 (8) (bh), 108.225 (1) (b), (16) (am) 1. (intro.), and (17) and 108.24 (1) of the statutes first applies with respect to overpayments established by the department of workforce development after the effective date of this subsection.

(1g) The treatment of sections 108.04 (11) (bh), 108.09 (2) (b), (3) (a) 1., and (8) (b), 108.22 (8) (bh), 108.225 (1) (b), (16) (am) 1. (intro.), and (17) and 108.24 (1) of the statutes first applies with respect to weeks of unemployment beginning with the first Sunday that follows the 180th day beginning after the effective date of this subsection.

(1r) The treatment of section 108.16 (6) (n) of the statutes first applies with respect to overpayments established by the department of workforce development after October 21, 2013.

(2) The treatment of section 108.04 (2) (ae) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(3) The treatment of section 108.22 (1) (a) of the statutes first applies with respect to accrual of interest for the 4th month beginning after the effective date of this subsection.

**SECTION 16. Effective date.**

(1) This act takes effect on the first Sunday after publication.

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